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In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, PETITIONER

v.

PAUL DAVIS SHERIDAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered November 19, 1945, reversing respondent's conviction for violations of Section 3 of the National Stolen Property Act.

OPINION BELOW

The opinion of the circuit court of appeals is reported at 152 F. 2d 57.

JURISDICTION

The judgment of the circuit court of appeals was entered November 19, 1945 (R. 21), and a petition for rehearing was denied January 28,

1946 (R. 29). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a person who fraudulently cashes in one state a forged check drawn on a bank in another state, has, with "unlawful or fraudulent intent", "caused" a falsely made or forged security to be transported in interstate commerce within the meaning of Section 3 of the National Stolen Property Act.

STATUTE INVOLVED

The National Stolen Property Act of May 22, 1934, c. 333, 48 Stat. 794–795, as amended, 18 U. S. C. 413–419, provides in pertinent part:

> SEC. 2. That when used in this Act—
>
> (a) The term "interstate or foreign commerce" shall mean transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.
>
> (b) The term "securities" shall include any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable

bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise; or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

* * * * *

SEC. 3. Whoever shall transport or cause to be transported in interstate or foreign commerce any goods, wares, or merchandise, securities, or money, of the value of $5,000 or more theretofore stolen, *feloniously converted,* or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been so stolen, *feloniously converted,* or taken, *or whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited se-*

curities, knowing the same to have been falsely made, forged, altered, or counterfeited, or whoever with unlawful or fraudulent intent shall transport, or cause to be transported in interstate or foreign commerce, any bed piece, bed plate, roll, plate, die, seal, stone, type, or other tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both: * * *.[1]

STATEMENT

Respondent was convicted in the United States District Court for the Eastern District of Michigan on all counts of a three-count indictment charging violations of Section 3 of the National Stolen Property Act (R. 2–4), and he was sentenced to imprisonment for five years on each count, the sentences to run concurrently (R. 7–8). Each count charged that respondent, with fraudulent intent, caused a falsely made or forged check to be transported in interstate commerce (R. 2–4).

The evidence shows that on July 19, 1943, respondent negotiated three bad checks. He had registered on July 18, 1943, at the Otsego Hotel

[1] The parts in italics were added by the amendment of August 3, 1939, c. 413, 53 Stat. 1178.

in Jackson, Michigan, and, when checking out the next morning, presented a check for $50.00, dated July 18, 1943, drawn on the First National Bank of Boston, Massachusetts, payable to cash, signed as maker by P. H. D. Sheridan, and bearing endorsement in the same name (count 3; R. 17–18). He received back $46.50 in cash over and above his bill (R. 18). The same day, July 19, 1943, respondent purchased articles at a jewelry store in Jackson giving a check for $62.50, dated July 15, 1943, drawn on the First National Bank of Cape Girardeau, Missouri, payable to P. H. D. Sheridan, and purporting to be signed as maker by "U. S. E. F. C. 14A, A. J. Davis, Commissioner" (count 1; R. 18). In this transaction, respondent obtained the articles and $26.50 in change (R. 18). On the same day he cashed another identically drawn check for $62.50 at the National Bank of Jackson (count 2; R. 18–19).

These checks were forwarded to the drawee banks in Massachusetts and Missouri, respectively, and were later returned unpaid and marked "no account" (R. 18–19). Investigation proved that there was no such agency or organization as "U. S. E. F. C. 14A" nor any such person as "A. J. Davis, Commissioner" listed with the United States Department of Commerce (R. 19).

Upon appeal to the United States Circuit Court of Appeals for the Sixth Circuit, the conviction

was reversed. It was the view of the court that the decision of this Court in *Kann* v. *United States,* 323 U. S. 88, reversing a conviction under the Mail Fraud Statute (§ 215 of the Criminal Code, 18 U. S. C. 338), was controlling; that, as under the latter statute, the use of the mails or other means of interstate commerce must, under the National Stolen Property Act, be for the purpose of executing a fraudulent scheme; and that respondent could not be said to have caused the checks to be transported in interstate commerce in furtherance of his fraud. Accordingly, the court held that the cashing of a forged check drawn on an out-of-state bank to which it is subsequently forwarded for payment, is not an offense under the National Stolen Property Act.

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the cashing of a forged check drawn on an out of state bank to which it is forwarded for payment does not constitute a violation of the National Stolen Property Act.

2. In reversing the judgment of conviction.[2]

[2] No error will be urged as to count three which involved a check signed by respondent in his own name as maker. It is unnecessary to sustain the judgment of conviction on that count, since the sentence thereon runs concurrently with the sentences on the other two counts involving checks signed with a fictitious name.

REASONS FOR GRANTING THE WRIT

The National Stolen Property Act punishes anyone who "with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged * * * securities." The questions here are whether the respondent caused the forged checks to be transported in interstate commerce and whether he acted with "unlawful or fraudulent intent". The court below did not find that respondent's conduct did not come within the normal meaning of the words of the statute. Its decision was that the facts of the case were substantially indistinguishable from those of *Kann* v. *United States*, 323 U. S. 88, a case arising under the Mail Fraud statute (18 U. S. C. 338). We believe both that the facts of the *Kann* case are distinguishable and that the Stolen Property Act has broader application than the Mail Fraud statute. Accordingly, we do not think that the *Kann* case requires that the Stolen Property Act be given other than its normal meaning. Inasmuch as there are a great many cases of this type, the problem is a recurring one and it is important that it be known whether activities of the sort here involved violate the Stolen Property Act.

No other circuit court of appeals has yet considered whether the National Stolen Property Act applies to the cashing of a forged check drawn

on an out-of-state bank to which it is subsequently forwarded by mail for payment. However, a district court has considered the question and come to a conclusion contrary to that reached by the court below. *Tolle* v. *Sanford, Warden,* 58 F. Supp. 695 (N. D. Ga.).[1] In *Barnett* v. *Hunter,* 138 F. 2d 448 (C. C. A. 10), the Act was held applicable although the issue discussed later in the *Kann* case was not raised.

1. At the outset it must be noted that no light is thrown upon the questions involved by the immediate legislative history of the amendment of 1939, which added the clause in question here (*supra,* pp. 3–4). However, the original Act was a part of the Government's legislative program of the early 1930's designed to aid state criminal law enforcement by closing the channels of inter-

[1] The court there said (p. 696):

"It will be seen, therefore, that the latter statute [National Stolen Property Act] does not provide, as does the mail fraud statute, that the use of the mails shall be an integral part of the execution of the fraud, but merely provides that whoever with fraudulent intent causes the forged securities to be transported in interstate commerce, commits a Federal offense. The fact that the transportation took place after the petitioner had secured the fruits of his forgery is immaterial, since the interstate transportation of the contraband securities is the gist of the offense. The fact that petitioner forged and passed a check in one state upon a drawee bank in another made it, as he must have known and intended, absolutely necessary that the check be transmitted in interstate commerce, so that fraudulent intent sufficiently appears."

state commerce to traffic of criminals or criminal activities. In this the Act is totally distinct from the Mail Fraud Statute, which was designed primarily to protect a federal instrumentality, the United States mails.

The statutes are thus not in *pari materia*. The Mail Fraud Statute, as pointed out by this Court in the *Kann* case, applies only to fraudulent schemes in which the use of the mails is a part of the execution of the fraud (323 U. S. at 95); the mails must be used "for the purpose of executing such scheme or artifice" (Criminal Code, § 215). On the other hand, the National Stolen Property Act excludes from interstate commerce already bad or adulterated items and does not require that the process of adulteration or fraud coexist with the use of interstate commerce. In this respect the Act might be said to be comparable to the Federal Food, Drug, and Cosmetic Act of 1938. 21 U. S. C. 301 ff. The Act, as a matter of fact, has its principal application to such things as interstate transportation of stolen goods where certainly the basic criminal aspects have reached fruition before the interstate movement. Compare the National Motor Vehicle Theft Act, 18 U. S. C. 408.

It is true that under the Act the transportation or causing the transportation of a forged, etc., security must be "with unlawful or fraudulent

intent," but this does not, as under the Mail Fraud Statute, necessarily require coexistence of such intent with the transportation. Where, as in the instant case, a defendant has a fraudulent state of mind at the time he sets in motion the series of events causing the transportation in interstate commerce, he commits an offense within the terms of the statute.

The court below concluded that it would be as illogical to find that respondent had caused the checks to be transported in interstate commerce as to find such in the *Kann* case. It must be noted that this Court came to no conclusion on causation in that case and in point of fact considered it a fair inference that the defendants believed the checks would, in accordance with normal business practices, be cleared through the mails (323 U. S. at 93). The same can be concluded as to respondent here. Moreover, there is an essential difference between the situation here and that in the *Kann* case not recognized by the court below. In that case the cashing of the checks was in nowise essential to the fraud, nor, considered separately, was it fraudulent in and of itself, since the scheme could just as well have been effected by cash payments between the conspirators; and the checks were valid instruments which the drawee bank was required to honor. In the instant case, however, the checks were invalid instruments, and their presentation for payment, which commenced the chain of events leading to transportation in

interstate commerce, was patently fraudulent. And it is obvious that respondent could not have succeeded by a direct claim on the drawee bank, but could only have effectuated the fraud by cashing the checks at a foreign bank which would then be required to clear them through the mails or other channels of interstate commerce. It is true that respondent had the fruits of his fraud before the use of the interstate mails commenced, but, in contradistinction to the situation of the *Kann* case, the fraud in its essentials could only have been perpetrated by a device, the ultimate and probable consequence of which was transportation in interstate commerce. Under such circumstances, respondent must be said to have caused the use of the mails. *Shea* v. *United States*, 251 Fed. 440 (C. C. A. 6); *Williams* v. *United States*, 295 Fed. 302, 304–5 (C. C. A. 5), certiorari denied, 265 U. S. 591. To conclude otherwise would limit causation to the narrow group of situations where the party charged with responsibility exercises upon the doer an inexorable compulsion from which there is no escape.

It is urged, therefore, that respondent, having had an unlawful and fraudulent intent with respect to the checks at the time he cashed them and thereby set in motion a chain of events which he must have realized would lead to the use of interstate mails, committed an offense within the terms of the Act.

2. The question involved is one of the substantial importance to the Department of Justice in its efforts to aid the states in criminal law enforcement and in the administration of this Act. Persons who traffic in bad checks are normally and desirably treated by state justice. But in many cases the activities and travels of such criminals are so widespread and repetitive that action by the states is difficult, if not impossible. Recognizing this fact, it has been the policy of the Department to prosecute cases such as the instant one, and a substantial number of similar convictions have been obtained, with the result that numerous persons are now serving sentences for such activities.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD MCGRATH,
Solicitor General.

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